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COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

FISH & RICHARDSON P.C.  
P.O. BOX 1022  
MINNEAPOLIS MN 55440-102

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**DEC 20 2007**

**OFFICE OF PETITIONS**

In re Application of :  
Maruyama, et al. : DECISION ON PETITION  
Application No. 10/821,927 :  
Filed: April 12, 2004 :  
Atty. Dkt. No.: 07977-297002 / :  
US5492D1 :

This is a decision on the petition to withdraw the holding of abandonment, filed October 18, 2007, under 37 CFR 1.181.

The petition is hereby **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

The instant application became abandoned April 27, 2007 for failure to timely file a proper reply to the non-final Office action mailed January 26, 2007. The non-final Office action set a three month shortened statutory period of time for reply. No petition for extension of time was timely submitted. Notice of Abandonment was mailed September 26, 2007.

Petitioners argue that the non-final Office action was defective. Petitioners reference oral communications with USPTO employees concerning the content of the non-final Office action. Petitioners submitted an interview summary on July 11, 2007. The interview summary states that a response to the non-final Office action would not be submitted due to reliance on the examiner who indicated the Office action "would be withdrawn and a new office action addressing claims 79-146 would be issued."

A review of the application history does not reveal that the non-final Office action was withdrawn. Nor does the record reflect that the examiner, after having conducted an interview

with applicants, intended to withdraw the non-final Office action and issue a new Office action. Further, an interview summary is not deemed a proper reply to an Office action within the meaning of 37 CFR 1.111.

Accordingly, absent a timely reply to the non-final Office action, the application became abandoned as a matter of law April 27, 2007. See, 35 USC 1.133.

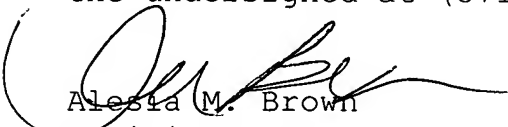
As to petitioners' argument that no reply was submitted because he understood the non-final Office action would be withdrawn and a new Office action mailed, petitioners' reliance upon oral advice from USPTO employees is not proper grounds for withdrawal of the holding of abandonment under 37 CFR 1.181. See, *In re Sivertz*, 227 USPQ 255, 256 (Comm'r Pat. 1985).

#### **ALTERNATE VENUE**

Petitioner may wish to consider filing a petition stating that the delay was unintentional. Petitioner's attention is directed to 37 CFR 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable". An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.



Alecia M. Brown  
Petitions Attorney  
Office of Petitions